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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PAUL HUPP,)	Civil No. 12cv0492 GPC(RBB)
)	
)	ORDER
Plaintiff,)	
)	(1) DENYING PLAINTIFF'S MOTION
)	TO COMPEL COMPLIANCE WITH
)	COURT'S [APRIL] 10, 2014 ORDER
v.)	[ECF NO. 255]; AND
)	
)	(2) GRANTING DEFENDANTS' EX
)	PARTE APPLICATION FOR
)	PROTECTIVE ORDER [263]
SAN DIEGO COUNTY, SAN DIEGO)	
POLICE DEPARTMENT, et al.,)	
)	
)	
Defendants.)	
_____)	

Pending before the Court is Plaintiff's Motion to Compel Compliance with the Court's April 10, 2014 discovery order [ECF No. 255]. Defendants City of San Diego and Wetzel's response in opposition to Plaintiff's Motion [ECF No. 262], along with an Ex Parte Application for Protective Order [ECF No. 263], were filed on June 16, 2014. For the following reasons, the Court DENIES Plaintiff's Motion to Compel Compliance with the Court's Order. Defendants' Ex Parte Application for Protective Order is GRANTED.

I. PROCEDURAL BACKGROUND

Plaintiff Paul Hupp, proceeding pro se, commenced this action on February 28, 2012. (Compl. 1, ECF No. 1.) Plaintiff's Third Amended Complaint was filed on August 28, 2012 [ECF No. 64], naming as Defendants San Diego County, City of San Diego, City of Beaumont, James Patrick Romo, Raymond Wetzel, William Kiernan, Peter Myers, and Joseph Cargel. (Third Am. Compl. 1, ECF No. 64.) Plaintiff served discovery requests on Defendants in July 2013. Unable to resolve a dispute regarding the scope and relevance of requested documents, Hupp filed a Motion to Compel Discovery on City of San Diego and Wetsel [ECF No. 152].

On April 10, 2014, the Court granted in part and denied in part Hupp's Motion to Compel Discovery from Defendants City of San Diego and Raymond Wetzel [ECF No. 251]. The Court directed Defendants to comply with the Order by April 23, 2014. (Order Granting & Den. Mot. Compel 11, 30, ECF No. 251.) On May 5, 2014, Hupp filed a Motion to Compel Compliance with Court's [April¹] 10, 2014 Order Compelling Discovery on City of San Diego and Raymond Wetzel [ECF No. 255] ("Motion to Compel Compliance").

II. DISCUSSION

A. The Court's April 10, 2014 Discovery Order

Plaintiff's Motion to Compel Compliance alleges that Defendants asked Plaintiff to sign a protective order prior to supplementing their document production. (Pl.'s Mot. Compel Compliance Attach. #1 Mem. P. & A. 3, ECF No. 255.) Hupp alleges that the Court's April 10, 2014 Order did not require Plaintiff to

¹ The caption of Plaintiff's motion erroneously seeks compliance with the "August 10, 2014 Order."

1 stipulate to a protective order. (Id.) Plaintiff seeks sanctions
2 in the amount of \$1,000 or any reasonable amount for his time spent
3 preparing and filing the Motion to Compel Compliance, the original
4 motion to compel, and the motion to quash overly broad subpoenas.
5 (Id. at 4.)

6 Hupp' Motion to Compel Discovery on City of San Diego and
7 Wetzel [ECF No. 152] was granted in part and denied in part.
8 (Order Granting & Den. Mot. Compel, ECF No. 251.) Hupp's document
9 request number two to Defendant City sought "[a]ny and all
10 documents that comprise of, or are part of, WETZEL'S file,
11 including the disciplinary record and any other documents
12 concerning WETZEL'S hiring, training, duties, performance,
13 assignments and mental and physical condition." (Pl.'s Mot. Compel
14 Attach. #1 Mem. P. & A. 24, ECF No. 152.) In partially granting
15 Plaintiff's motion to compel production of items described in
16 request number two, the Court ordered Defendants to produce
17 documents from Wetzel's personnel file if (1) they related to the
18 production of exculpatory evidence; (2) the items concerned
19 probable cause or the standards for bringing criminal or civil
20 contempt charges; or (3) the documents referred or related to the
21 credibility, truthfulness, or veracity of Wetzel. (Order Granting
22 & Den. Mot. Compel 18, ECF No. 251.) The April 10, 2014 Order also
23 stated: "These items are to be produced pursuant to a protective
24 order limiting use and dissemination of the items to this case and
25 providing for their destruction at the conclusion of the matter.
26 Documents may be redacted to protect other information privileged
27 from discovery." (Id.) (emphasis added). Thus, to the extent Hupp
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1 argues he was not required to stipulate to a protective order prior
2 to receiving additional discovery, he is incorrect.

3 Plaintiff alleges that Defendants failed to comply with the
4 Court's Order when they asked him to sign a protective order on
5 April 24, 2014, after the deadline to comply had passed. (Pl.'s
6 Mot. Compel Compliance Attach. #1 Mem. P. & A. 3, ECF No. 255.) A
7 careful review of Plaintiff's Exhibit 1, submitted in support of
8 his Motion to Compel Compliance, reveals that Hupp received an e-
9 mail from Defendants' counsel on April 23, 2014, which stated:

10 The City defendants intend to produce additional
11 documents to Plaintiff following the Court's April 10,
12 2014 Order on Plaintiff's Motion to Compel. However, we
13 are only obligated to produce information from Detective
14 Wetzel's personnel file pursuant to a Protective Order.
15 I have attached a proposed Protective Order for all
16 parties to review and sign. Once you have approved it, I
17 will prepare a Joint Motion on the issue. Finally, once
18 the Court issues the Protective Order, the City
19 defendants will produce additional documents pursuant to
20 the terms.

21 (Id. Attach. #2 Hupp Decl. Ex. 1, at 5-6.) Plaintiff acknowledged
22 the receipt of this communication when he responded on the same
23 day:

24 The deadline to produce the amended responses is
25 today, if you wanted a protective order you should have
26 sent one over immediately after Judge Brooks issued his
27 order to compel on April 10, 2014.

28 In addition your late reply amounts to a waiver of
the protective order.

I will not stipulate to a protective order.

(Id. at 6-7.) Thus, although Plaintiff argues that Defendants'
request that he sign a protective order was untimely because it was
made on April 24, 2014, the contention is rebutted by Hupp's
evidence.

1 The Court is satisfied, after reviewing the Motion to Compel
2 Compliance, accompanying exhibits, and the Defendants' opposition,
3 that the Defendants complied with the Court's April 10, 2014 Order.
4 Thus, Plaintiff's Motion to Compel Compliance is DENIED. Because
5 the Court denies Hupp's Motion, his request for sanctions is also
6 denied.

7 **B. Defendants' Application for Protective Order**

8 Defendants City of San Diego and Raymond Wetzell apply ex parte
9 for a protective order governing confidential information that the
10 Court ordered produced to Plaintiff. (Defs.' Ex Parte Appl.
11 Protective Order 1, ECF No. 263.) Defendants contend that good
12 cause exists to issue a protective order prior to production of
13 responsive documents from Defendant Wetzell's personnel file. (Id.
14 at 2.) Defendants' counsel explains that she forwarded a proposed
15 protective order to Plaintiff, however, he refused to stipulate to
16 a protective order. (Id. Attach. #1 Decl. Milligan 1-2.) A copy
17 of the proposed protective order is attached to Defendants'
18 application. (Id. Attach. #3 Ex. 2, at 1-8.)

19 The Court previously specified that documents from police
20 personnel files are to be produced pursuant to a protective order.
21 (Order Granting & Den. Mot. Compel 18, ECF No. 251.) Plaintiff did
22 not stipulate to the protective order requested by Defendants, and
23 failed to propose alternate language for a protective order.
24 Accordingly, Defendants' ex parte application for the entry of a
25 protective order is GRANTED. Furthermore, Defendants are not
26 required to commence production of documents pursuant to the
27 Court's April 10, 2014 Order until Plaintiff acknowledges in
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1 writing that he has read, understands, and agrees to abide by all
2 the terms of the protective order.

3 **IV. CONCLUSION**

4 For the reasons stated above, Plaintiff's Motion to Compel
5 Compliance [ECF No. 154] is DENIED, and Defendants' Ex Parte
6 Application for Protective Order [ECF No. 160] is GRANTED.
7 Production under the protective order is STAYED pending a written
8 acknowledgment from Plaintiff that he agrees to abide by the terms
9 of the protective order. If Hupp wishes to receive requested
10 relevant documents he must provide to Defendants by July 25, 2014,
11 a sworn affidavit stating that he has read, understands, and agrees
12 to abide by the terms of the protective order.

13 **IT IS SO ORDERED.**

14 Dated: June 24, 2014



Ruben B. Brooks
United States Magistrate Judge

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16 cc: Judge Curiel
17 All Parties of Record
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